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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/711,462 | 11/13/2000 | Erik Larsen | 5089-2PUS/CIP | 7912 |

7590 09/25/2002

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| EXAMINER |
|---|
| NASSER, ROBERT L |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3736 | |

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

| Application No. | Applicant(s) |
|---|---|
| 09/711,462 | Larsen et al |
| **Examiner** | **Art Unit** |
| Robert Nasser | 3736 |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on _____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) *1-58* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3, 5, 7-9, 13-21, 30-32, 34, 36-38, and 42-50* is/are rejected.

7) ☒ Claim(s) *4, 6, 10-12, 22-29, 33, 35, 39-41, and 51-58* is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Before beginning, the examiner notes that the apparatus claim find support int he parent applicant, and thus are entitled to the 1991 filing date. However, the method claims are not supported by the parent, 08/094161, and therefore have a filing date of 11/13/2000.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 7, 8, 9, 30-32, 34, and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Diamantopoulos. Diamantopoulos shows a device having a base, an applicator 60 that is moveably attached to the based via an arm, and at least multiple light sources that emits light at 600, 900, and 1200 nm (approximately) in addition to ultraviolet light. In addition, the light source is a semiconductor or laser diode. Also, frequency of operation, and pulse width is in the claimed range. With respect to the voltage supplied to the sources, the exact voltage would have been obvious to one skilled in the art. The examiner notes that Diamantopoulos meets the limitations of claim 8 and 37, except for the circuit board. The exact mounting structure would have been a mere mater of design choice. Claims 9 and 38 are rejected in that the examiner takes official notice that it is obvious to use a lens on a light treatment device, to focus the light to a desired location.

Claims 13, 17, 42, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission in the background section ion view of Diamantopoulos et al. In the background section, applicant states that the recited method is well known. However, no light source is disclosed. Diamantopoulos shows a light source that meets the claim structure. From this teaching, it would have been obvious to modify the method to use the device of Diamantopoulos, as it is merely the use of a known dermatologic device in a dermatologic method.

Claims 14-16 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission in view of Diamantopoulos, as applied to claims 13, 17, 42, and 46 above, further in view of Meserol. Meserol further teaches that in photodynamic therapy, the photosensitizer may be applied topically in a lotion, with a pill, or with an injection. It would have been obvious to modify the above method to use apply the photo agent using one of these methods, as it is merely the use of a well known method for applying a drug in the art.

Claims 18, 19, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission in view of Diamantopoulos, as applied to claims 13, 17, 42, and 46 above, further in view of Vogel et al. Vogel et al teaches using dimethyl sulfoxide in combination with a photosensitizer to enhance absorption. Hence, it would have been obvious to modify the above combination to use dimethyl sulfoxide, to enhance absorption.

Claims 20, 21, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission in view of Diamantopoulos, as applied to claims 13, 17, 42, and 46 above,

further in view of Chen et al. Chen et a teaches that depending on the photosensitizer used, the patient should stay out of the sun for 2 days to 6 weeks. Hence, the ranges claimed are taught and it would have been obvious to modify the above combination to follow this advice, so as to prevent unwanted after effects. The exact dosage would have been obvious to one skilled in the art.

Claims 4, 6, 10-12, 22-29, 33, 35, 39-41 and 51-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Flower discloses a photodynamic therapy device.

Davitshvili et al show s a biostimulating device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg, can be reached on (703) 308-3130. The fax phone number for this Group is (703) 308-0758.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [**max.hindenburg@uspto.gov**].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN
September 20, 2002

Robert L Nasser

ROBERT L. NASSER
PRIMARY EXAMINER